IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7764 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

DIST.PANCHAYAT

Versus

PUSHPABEN GORDHANBHAI MAKWANA

Appearance:

1. Special Civil Application No. 7764 of 1993

MR PV HATHI for Petitioner No. 1

MR NK MAJMUDAR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 01/12/2004

ORAL JUDGEMENT

1. This petition, styled as petition under Articles 226 and 227 of the Constitution, in reality, challenges the award of the Labour Court in Reference (LCJ) No.1994

of 1990 whereby the respondent is awarded reinstatement with 40% backwages. The learned counsel for the petitioner fairly submitted at the outset that pursuant to the impugned award and order dated 12.4.1993, the respondent was already reinstated and even the amount of backwages was paid on 11.6.1993 even as the petition was admitted and stay against payment of arrears of backwages was granted on 26.12.1994.

2. The impugned award contains finding of facts to the effect that the respondent was appointed on temporary and part-time basis as an attendant by the petitioner and, after serving for more than eight years, she was discharged from service without complying with the mandatory provisions of the Industrial Disputes Act, 1947. Admittedly, the respondent was not given notice pay or retrenchment compensation and, therefore, the Labour Court came to the conclusion that the termination was invalid. However, in view of the admission to the effect that the respondent had earned Rs.250/- during the last six months, the order as to backwages was reduced to 40% and the final order was accordingly made. The learned counsel for the petitioner submitted that since the respondent was employed on temporary basis to cope up with the additional work, the order of reinstatement ought not to have been made and in absence of any regular post of attendant or peon, she could not have been ordered to be reinstated on the same post. He further submitted that there was no original post on which the respondent had worked and, therefore, there could not be reinstatement on the original post. There is no substance in these arguments insofar as the dispute before the Labour Court was as to whether the termination of service of the respondent was legal and, if it was not legal, the necessary consequence of reinstatement had to follow. In view of the fact that the impugned award is already fully implemented, there is no question of modifying the final relief. Thus, there being no substance in the petition, it is rejected and Rule is discharged with no order as to costs.

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)